

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-04-18

To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 8.17, "Licensee Complaints Against NRC Employees"

Purpose: Directive and Handbook 8.17 are being issued to standardize the process for handling licensee complaints against NRC employees and to complete an Agency Labor-Management Partnership Committee action item regarding employee protections.

Office of Origin: Office of Nuclear Reactor Regulation

Contact: David Allsopp, 301-415-3073

Date Approved: **November 24, 2004**

Volume: 8 Licensee Oversight Programs

Directive: 8.17 Licensee Complaints Against NRC Employees

Availability: Rules and Directives Branch
Office of Administration
Michael T. Lesar, 301-415-7163
Christy Moore, 301-415-7086

LICENSEE COMPLAINTS AGAINST NRC EMPLOYEES

Directive
8.17

Contents

Policy	1
Objectives	1
Organizational Responsibilities and	
Delegations of Authority	2
Executive Director for Operations (EDO)	2
Office of the General Counsel (OGC)	2
Office of the Inspector General (OIG)	2
Director, Office of Human Resources (HR)	2
Office Directors and Regional Administrators	2
Senior Management Representative (SMR)	3
Regional Counsels	3
Director, Division of Contracts (DC), Office of Administration (ADM)	4
Division Directors	4
Applicability	4
Handbook	4
References	4



U. S. Nuclear Regulatory Commission

Volume: 8 Licensee Oversight Programs

NRR

Licensee Complaints Against NRC Employees

Directive 8.17

Policy (8.17-01)

It is the policy of the U.S. Nuclear Regulatory Commission to manage complaints raised by licensees of alleged improper action by NRC employees in such a way as to promote open communication between the licensees and NRC. While most complaints against NRC employees originate with licensees, management may elect to invoke these procedures for complaints against employees that originate with sources other than a licensee.

Objectives (8.17-02)

- Implement the licensee complaint process in a fair and objective manner. Be equitable to the staff member against whom the complaint is made, to the licensee representative making the complaint, and to the legitimate needs of NRC. (021)
- Expeditiously determine the validity and significance of complaints against NRC employees and, where appropriate, take corrective action. (022)
- As appropriate, acknowledge the receipt of a complaint and inform the licensee representative making the complaint of the resolution of the concern. (023)

Organizational Responsibilities and
Delegations of Authority
(8.17-03)

Executive Director for Operations (EDO)
(031)

Establishes and oversees the process for responding to complaints raised by licensees against NRC employees.

Office of the General Counsel (OGC)
(032)

Provides legal counsel to NRC officials who review complaints of improper action by NRC employees. Advises those officials responsible for taking appropriate action once the complaint has been investigated.

Office of the Inspector General (OIG)
(033)

Investigates allegations of fraud, waste, abuse, or misconduct by NRC employees as well as allegations of mismanagement of agency programs.

Director, Office of Human Resources (HR)
(034)

Provides guidance to NRC officials regarding disciplinary, adverse, or other appropriate personnel actions.

Office Directors and Regional Administrators
(035)

- Implement the process to respond to complaints raised by licensees against NRC employees. (a)

Organizational Responsibilities and
Delegations of Authority
(8.17-03) (continued)

Office Directors and Regional Administrators
(035) (continued)

- Assign responsibility for this process to an appropriate senior management representative (SMR) in their office (usually the deputy office director or the deputy regional administrator). (b)
- Review and approve the course of action proposed by the SMR for resolution of the complaint. (c)
- Determine the course of action when the complaint involves the designated SMR. (d)
- Respond to complaints related to the action of an individual or individuals who are performing work under a Department of Energy (DOE) laboratory agreement or an interagency agreement awarded by the office. (e)

Senior Management Representative (SMR)
(036)

Acts as the principal NRC official who oversees the implementation of this process in his or her office or region and serves as the focal point for communications with other offices and the licensee representative raising the complaint.

Regional Counsels
(037)

- Implement the tasks in this process designated to the regional counsel, including maintaining records and advising the staff on the standards for conduct and performance. (a)
- Serve as backup to the regional SMR in his or her absence. (b)

Volume 8, Licensee Oversight Programs
Licensee Complaints Against NRC Employees
Directive 8.17

Organizational Responsibilities and
Delegations of Authority
(8.17-03) (continued)

Director, Division of Contracts (DC),
Office of Administration (ADM)
(038)

Responds to complaints related to actions of an individual or individuals who are performing work under an NRC contract or an interagency agreement that DC has awarded.

Division Directors
(039)

Implement portions of this process as tasked by the SMR.

Applicability
(8.17-04)

The policy and guidance in this directive and handbook apply to all NRC employees.

Handbook
(8.17-05)

Handbook 8.17 describes the process to be followed when a licensee raises a complaint of improper action against an NRC employee.

References
(8.17-06)

Code of Federal Regulations—

5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."

References

(8.17-06) (continued)

5 CFR Part 5801, "Supplemental Standards of Ethical Conduct for Employees of the NRC."

10 CFR 1.12, "Office of the Inspector General."

U.S. Nuclear Regulatory Commission

NRC Announcements—

34, "Sexual Harassment Prevention Program," and its attachment, May 17, 1998.

52, "Communication and Management Resolution of Inappropriate Regulatory Actions by NRC Staff," and its attachments, July 11, 1995.

NRC Inspection Manual, Chapter 1201, "Conduct of Employees."

NRC Management Directives—

7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

7.5, "Ethics Counseling and Training."

8.8, "Management of Allegations."

10.99, "Discipline, Adverse Actions, and Separations."

NUREG/BR-0075, Revision 4, Field Policy Manual No. 10, "Conduct of Employees."

United States Code

5 U.S.C., Appendix 3, "Inspector General Act."

LICENSEE COMPLAINTS AGAINST NRC EMPLOYEES

Handbook

8.17



Contents

Licensee Complaints Against NRC Employees	1
Processing Complaints (A)	1
First Contact (B)	2
Initial Actions of the Senior Management Representative (C)	4
General (1)	4
Determining OIG Involvement (2)	4
OIG-Handled Complaints (3)	5
Staff Office Handled Complaints (4)	5
Complaints Against a Contractor (5)	5
Documenting Complaints (D)	6
Detailed Guidance for Resolution of a Complaint (E)	6
SRM Actions (1)	6
Division Director Actions (2)	8
Actions If the Complaint Is Substantiated (F)	9
Actions If the Complaint Is Not Substantiated (G)	10
Periodic Status Reports (H)	10
Annual Review of Results (I)	11
 Exhibit	
“Flow Chart of the Licensee Complaint Process”	12

Licensee Complaints Against NRC Employees

Processing Complaints (A)

The process for handling a licensee complaint against an NRC employee includes the actions by which NRC will receive, document, act on, resolve, or forward to other authorities (e.g., the Office of the Inspector General [OIG]) complaints against an NRC employee. While the formal process in this directive is considered appropriate to resolve complaints raised by licensees, management has the option to invoke this directive (or portions of it) to resolve other complaints. (1)

Complaints of improper action can be matters of conduct or job performance. These terms, as they apply herein, may include— (2)

- **Misconduct.** Action or inaction by an employee that adversely affects the ability of NRC or one of its components to perform NRC's mission efficiently and effectively. Examples of conduct issues are misuse of position; fraud and other questions of honesty and integrity; waste and abuse; and conflicts of interest. (a)
- **Unacceptable Performance.** Failure of an employee to accomplish assigned duties or responsibilities. Performance issues are usually resolved as management issues (i.e., are not referred to OIG) and generally relate to the staff member's regulatory and technical competence. (b)

Allegations of fraud, waste, abuse, misconduct, or mismanagement of agency programs by an NRC employee must be reported to OIG. Office or division directors who receive reports or are made aware of alleged violations must report these allegations directly to OIG. Nothing in this directive or handbook is intended to limit any licensee, NRC employee, or member of the public from contacting OIG directly with his or her concern. (3)

Processing Complaints (A) (continued)

While it is the role of OIG to perform investigations under its cognizance as reflected in Section (A)(3) above, there may be special circumstances that require immediate and appropriate NRC inquiry and action. These circumstances should be discussed with OIG and could include, for example, complaints that raise public health and safety concerns or ongoing offensive conduct in the workplace such as sexual or racial harassment. (4)

All complaints of improper action by an NRC employee will be given high priority and resolved as quickly as possible. Time is of the essence in such matters because of the effect of the complaint on the NRC employee and because of the agency action that may be required. (5)

The exhibit included with this handbook is a flow chart of the licensee complaint process, and each step of the process is discussed below. (6)

First Contact (B)

An NRC employee approached by a licensee representative with a complaint of misconduct or unacceptable performance against an NRC employee should advise the complainant that he or she has the option of contacting OIG directly or of contacting the senior management representative (SMR) who has the responsibility for implementing the licensee complaint process. If the complainant decides to contact OIG, the recipient need only obtain the complainant's name and address and provide them to OIG. For complaints not referred to OIG or the SMR by the complainant, the recipient of the complaint will collect all the information (as discussed below) and then fully brief the appropriate SMR on the issue.

Recipient's Actions

If the complainant does not wish to contact OIG or the SMR, the recipient should ask the complainant to put the complaint in

First Contact (B) (continued)

writing so that it is captured accurately. If the complainant refuses, elicit as many specific details about the alleged improper actions as possible, including the name, mailing address, and telephone number of the complainant, as well as the names, addresses, and telephone numbers of other individuals who could provide additional or corroborating information. Document all the information, including the circumstances under which the complaint was received, and forward it immediately to the SMR or his or her designee. Although the recipient of the complaint should obtain all available information from the complainant, the recipient is not authorized to conduct any followup inquiry. (1)

Inform the complainant that while his or her complaint will be handled discreetly, subsequent personnel or investigative actions may make it necessary to involve the complainant further and may require disclosing the identity of the complainant. If the complainant declines further involvement and does not want a response, inform him or her that NRC will provide no feedback to the complainant. (2)

Do not disclose the identity of the individual or individuals who are the subject of the complaint or any details of the complaint to anyone other than the SMR. The recipient should personally handle all documentation of the complaint and pass it on to the SMR. (3)

If the complaint concerns an issue requiring immediate resolution (such as the fitness for duty of an employee seeking immediate site access), the recipient should contact a member of the accused's management chain, such as the branch chief or the division director, if the recipient is unable to reach the SMR promptly. (4)

Initial Actions of the Senior Management Representative (C)

General (1)

If the complainant contacts the SMR, the SMR will discuss the issue with the complainant, make sure that the written complaint contains all the necessary information, and determine the complainant's position regarding further involvement. The SMR should obtain sufficient information from the complainant to determine whether an investigation is warranted. If the complaint relates to an NRC employee from another office, the receiving SMR will inform the appropriate SMR of the other office. (a)

After the receipt of a complaint, the SMR will consult with the Office of Human Resources (HR) and the Office of the General Counsel (OGC) as necessary to determine the appropriate course of action. The SMR will decide whether the complaint falls within one of two categories: alleged misconduct or unacceptable performance. (b)

Determining OIG Involvement (2)

If the complaint appears to involve NRC employee or contractor fraud, waste, abuse, mismanagement in an NRC program or operation, or misconduct (including allegations of misconduct that could significantly affect public health or safety), the SMR will ensure that OIG is immediately provided all pertinent information regarding the complaint. For these types of complaints, the SMR will contact the Assistant Inspector General for Investigations (AIGI) or the Senior Level Assistant for Investigative Operations (SLAIO) in OIG to discuss the complaint and decide whether the matter should be handled by OIG or the NRC staff. The SMR should indicate the staff's preference to OIG. (a)

OIG will review the complaint and determine appropriate action for that office. Allegations that suggest poor performance or that warrant a technical review are generally referred to NRC management. If OIG accepts the complaint for action, no further

**Initial Actions of the Senior
Management Representative (C) (continued)**

formal investigative action will be taken by the SMR. When requested by OIG, the SMR will give OIG a written report of action taken on the complaint. (b)

OIG-Handled Complaints (3)

If the complaint is handled by OIG, the matter will be treated in a manner consistent with Management Directive (MD) 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." The SMR will seek the views of OIG regarding whether the employee and/or management should be informed of the complaint and its referral to OIG. Dissemination of information about the matter will depend on the legitimate interests of OIG and the mission-related needs of NRC. The SMR will document the referral and OIG's position regarding dissemination of the information and to whom it was provided and then will close the file.

Staff Office Handled Complaints (4)

If OIG refers the complaint back to the agency staff office, and/or the SMR, the complaint will be handled as described below (see Sections D through H). For these referrals, the SMR should notify OIG of the outcome of any agency inquiry, including whether the allegation was substantiated or not; what, if any, disciplinary action was taken; and any action taken to modify the employee's assignments. The SMR will consult with the office director or the regional administrator and the appropriate division director to decide whether or not modifications to an employee's assignments will be made. (a)

The SMR also will issue an acknowledgment letter to the complainant. (b)

Complaints Against a Contractor (5)

If OIG refers a complaint back to the agency staff office that relates to the actions of an individual or individuals who are

Initial Actions of the Senior Management Representative (C) (continued)

Complaints Against a Contractor (5) (continued)

performing work for NRC under a contract, an interagency agreement, or a DOE laboratory agreement, the complaint should be directed to the awarding office.

Documenting Complaints (D)

Upon receipt of the complaint, the SMR will prepare a file for the complaint. The file label will bear a numerical designation: MD817-YY (year)-XX-(number). The last number in the label will begin with "01" and continue in ascending order, reverting back to 01 at the beginning of each new calendar year (e.g., MD817-04-02 indicates the second complaint in 2004). The files will not be identified by employee name or other personal identifier. (1)

Files and documents containing personal information must be kept in a secure file cabinet or safe when not under the personal control of the SMR or an authorized reviewer and must not be entered into ADAMS (the Agencywide Documents Access and Management System). Any formal records generated in reviewing the complaint will be maintained in the designated file for a period of 5 years. Following the 5-year retention period, the records may be destroyed. (2)

Detailed Guidance for Resolution of a Complaint (E)

SMR Actions (1)

If the SMR believes that the complaint warrants investigation or if the complainant desires a response and documents the complaint in writing, the SMR will take the following steps and proceed with the complaint as documented by the complainant, or by documenting the complaint in a letter to the complainant, or a memorandum to the file if the complainant refused contact. The SMR will inform the division director of the NRC employee(s) identified in the complaint and authorize release to the division

Detailed Guidance for Resolution of a Complaint (E) (continued)

SMR Actions (1) (continued)

director of information contained in the complaint file. The SMR will provide a tasking document to the division director identifying the specific complaint to be addressed and the potential violation, if known. (a)

The SMR should carefully consider the timing of when to inform the employee of the complaint. Early notification permits the employee to promptly correct any improper or offensive conduct. However, this action must be weighed against the advantage of permitting the employee to complete his or her work activity (e.g., for an inspector, waiting until after the inspection report is issued) without creating a concern that the employee's knowledge of the complaint affected the impartiality of his or her work activities. (b)

If an investigation is warranted, to the extent practicable the employee will be permitted to provide relevant information before the SMR discusses the matter with licensee staff (other than the complainant) or other agency staff. The affected employee should be provided an adequate amount of official time to respond. In most instances, the identity of the complainant will not be provided to the employee at this point. (c)

After reviewing the division director's recommendations and plan, the SMR will recommend a plan of action to the appropriate office director or regional administrator who must approve the plan before it can be implemented. (d)

Preventing an employee from participating in assigned activities should be considered only when it is necessary to protect the employee, or to prevent inadvertent compromise of an ongoing investigation, or to protect the legitimate interests of NRC. The SMR should consult with the General Counsel, the Director of the Division of Resource Management and Administration (for regional employees), and the Director of HR on the method for implementing restrictions on employee activities. (e)

Detailed Guidance for Resolution of a Complaint (E) (continued)

SMR Actions (1) (continued)

When the complainant has requested a response, the SMR will notify the complainant in writing that NRC has addressed the complaint and whether or not the complaint was substantiated. No details of any personnel action shall be included. A copy of the correspondence will be placed in the complaint file. (f)

Division Director Actions (2)

Division directors will minimize the disclosure of information regarding the complaint to protect the privacy of the accused. However, division directors may delegate actions to other managers or supervisory personnel and seek guidance from the regional counsel or OGC, as appropriate, or from the regional personnel officer or HR, as appropriate, as needed to resolve the complaint. Division directors should understand when union representation is appropriate (e.g., if the complaint is against a bargaining unit employee) by reviewing and applying the applicable section of the Collective Bargaining Agreement between NRC and the union, and consulting with their HR representative. (a)

The division director or designee will direct the affected employee not to contact any involved or suspected licensee or licensee employee or pursue resolution of the complaint independently. At this time, the employee may request to be excused from duties involving that particular licensee or site pending resolution of the complaint. (b)

The division director or designee will inform the employee of the issue(s), providing full details of the complaint in writing and obtaining the employee's written version of events. After receiving the employee's written version of the issue, the division director or designee will inform the SMR of— (c)

Detailed Guidance for Resolution of a Complaint (E) (continued)

Division Director Actions (2) (continued)

- Any followup actions needed to ascertain additional facts and to evaluate the significance of the complaint (e.g., interview complainant, licensee, licensee employees, NRC coworkers and evaluate work patterns). (i)
- Recommendations, as appropriate, for remedial actions. (ii)
- The plan to execute any of the above, including a schedule for implementation. (iii)
- A recommendation, if warranted, to preclude the accused employee from participating in any activities related to the licensee and/or work activity identified in the complaint. (Any employee request to be excused from such activities also should be communicated along with the recommendation.) (iv)

The division director or designee will execute the approved action plan in a timely manner and keep the SMR and the affected employee up to date with status reports. As a minimum, verbal status reports will be provided at intervals of 60 days until the matter is resolved. (d)

Actions If the Complaint Is Substantiated (F)

If the complaint is substantiated, the division director will consult with the Director of the Division of Resource Management and Administration (for regional employees), HR, and OGC on what appropriate actions should be taken and advise the SMR. In these cases, the SMR will advise the office director or the regional administrator on any proposed action. (1)

If the investigation results in the initiation or taking of formal disciplinary action (e.g., reprimand, suspension, downgrade, or removal) against the accused employee, the employee has a right to review the material on which the discipline is based and that is

Actions If the Complaint Is Substantiated (F) (continued)

relied on to support the reasons for the discipline. When a matter being investigated by management discloses new, significant information regarding allegations of misconduct, OIG will be contacted with these additional facts and provided the opportunity to assume jurisdiction over the matter. (2)

The SMR will advise the employee of the findings and initiate the appropriate remedial action. Any personnel action to be taken will be processed consistent with applicable law, regulation, and policies. (3)

Actions If the Complaint Is Not Substantiated (G)

If it is determined that the record does not support the complaint, the division director or designee (following discussions with the SMR and with his or her approval) will inform the employee in writing within 5 calendar days of the decision. The division director or designee will inform division management when a decision has been reached and will document the decisions and subsequent actions in the file. (1)

If the complaint is not substantiated, the SMR will have to consider the possibility of an improper motive underlying the complaint. The SMR should consider issues such as the following: (a) Could the complaint possibly have been made to divert attention from a violation of NRC requirements, or to retaliate, or to fetter the NRC employee from performing his or her duties? (b) Is there evidence that a trend of unsubstantiated complaints exists? If there is evidence of any improper motive, the SMR will consult with the office director or the regional administrator regarding a course of action within NRC's regulatory authority. (2)

Periodic Status Reports (H)

The division director or designee will provide the SMR and the affected employee with status reports as specified in Section E(2)(d) of this handbook. The SMR will meet with the office

Periodic Status Reports (H) (continued)

director or the regional administrator on a monthly basis to discuss the status of active complaints. For complaints that remain open after 120 days, the SMR will discuss the circumstances surrounding the delay; the status of the investigation, describing the progress achieved thus far; and the estimated time to completion. The office director or the regional administrator will review this information to determine if the efforts devoted to the investigation and the estimated completion date are appropriate.

Annual Review of Results (I)

Annually, each regional SMR will review the complaints received during the preceding calendar year and identify trends and assess results. As part of the review process, the SMR should determine the total number of complaints received, the number substantiated, and the number not substantiated. When the review is complete, the regional administrator will implement any appropriate actions on the basis of lessons learned.

Exhibit
Flow Chart of the Licensee Complaint Process

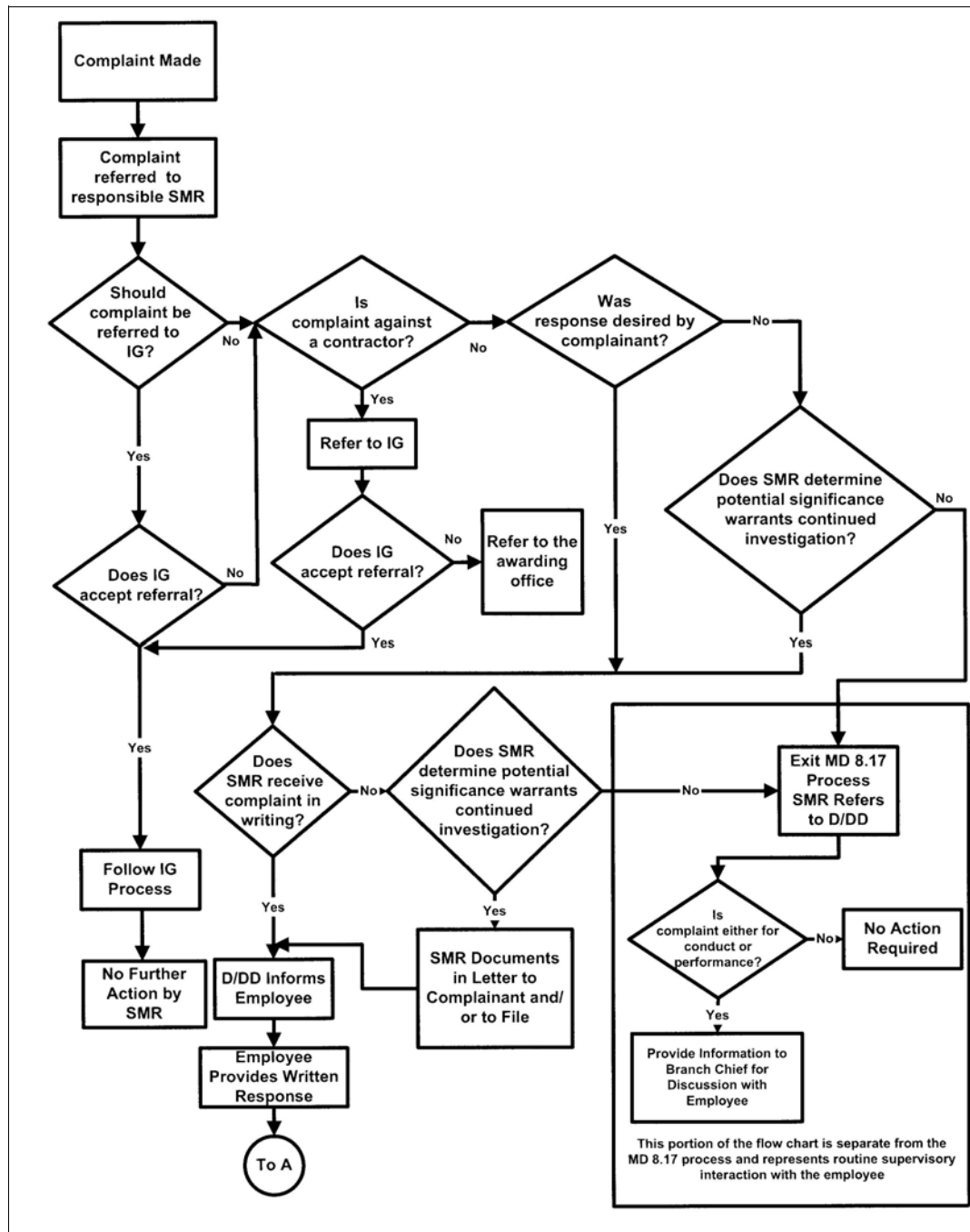


Exhibit (continued)

